towns,[1] each corporate town having at least one representative, and more in proportion to its population, the proportion being at the rate of one additional member for every 275 ratable polls. In 1836 the scale of population to representatives was raised, and a plan prescribed (too complicated to be here set forth) under which towns below the population entitling them to one representative, should have a representative during a certain number of years out of every ten years, the census being taken decennially. Thus a small town might send a member to the Assembly for five years out of every ten, choosing alternate years, or the first five, or the last five, as it pleased. Now, however (Amdts. of A.D. 1857), the State has been divided into forty Senatorial districts, each of which returns one senator only, and in 175 Assembly districts, returning, one, two, or, in a few cases, three representatives each. The composition of the legislature has declined ever since this change was made. The area of choice being smaller, inferior men are chosen; and in the case of the Assembly districts which return one member, but are composed of several small towns, the practice has grown up of giving each town its turn, so that not even the leading man of the district, but the leading man of the particular small community whose turn has come round, is chosen to sit in the Assembly.

Universal manhood suffrage, subject to certain disqualifications in respect of crime (including bribery and polygamy) and of the receipt of poor law relief, which prevail in many States — in eight States no pauper can vote — is the rule in nearly all the States. One State (Wyoming, admitted in 1890) gives the suffrage to women. A property qualification was formerly required in many, and lasted till 1888 in Rhode Island, where the possession of real estate valued at $134, or the payment of a tax of at least $1 was required from all citizens not natives of the United States.[2] Five other States (Delaware, Massachusetts, Pennsylvania, Tennessee, and Mississippi) require the voter to have paid some State or county tax (Massachusetts and Tennessee call it a poll tax); but if he does not pay it, his party usually pay it for him, so the restriction is of little practical importance. Massachusetts also requires that he shall be able to read the State Constitution in English, and to write his name (Amdt. of 1857), Connecticut, that he shall be able to read any section of the Constitution or of the statutes, and shall sustain a good moral character (Amdts. of 1855 and 1845). This educational test is of no great consequence, partly, no doubt, because illiteracy is not high in either State; and under the new ballot laws it will scarcely be needed. In Massachusetts it has latterly been pretty well enforced, but for a while the party managers on both sides agreed not to trouble voters about it. Mississippi prescribes that the person applying to be registered "shall be able to read any section of the Constitution or be able to understand the same when read to him, or give a reasonable interpretation thereof" (Const. of 1890).[1] Certain terms of residence within the United States, in the particular State, and in the voting districts, are also required: these vary greatly from State to State, but are usually short.

The suffrage is generally the same for other purposes as for that of elections to the legislature, and is in most States confined to male inhabitants. In a few States women are permitted to vote at school district and in one (Kansas) at municipal elections,[2] and in these no disability has been imposed

[1] A town or township means in New England, and indeed generally in the United States, a small rural district, as opposed to a city. It is a community which has not received representative municipal government. — See Chapter XLVIII. *post*.

[2] Rhode Island, however, retains a qualification for the purposes of voting for certain financial officers. A good many constitutions forbid the imposition of any property qualification.



[1] The reasonable interpretation of this remarkable provision seems to be that it is intended to furnish a peaceful method of excluding illiterate negroes and including illiterate whites: a result which has been in fact attained, and which, though it may appear at variance with the spirit of the fifteenth amendment to the Federal Constitution, is under the circumstances of Mississippi possibly not the worst solution of a difficult problem.

The Constitution of Colorado, 1876, allows its legislature to prescribe an educational qualification for electors, but no such law is to take effect prior to A.D. 1890. Florida by its Constitution of 1868 directed its legislature to prescribe such qualifications, which, however, were not to apply till after 1880, nor to any person who might then be already a voter. (In the Constitution of 1886 I find no such provision.) On the other hand, the Constitution of Alabama forbids any educational qualification to be imposed. It is curious, yet easily explicable, that one of the least educated States should prohibit what two of the best educated States expressly prescribe. The safeguard is applied where it is least, and forbidden where it is most, needed. In Alabama it would have excluded most of the negroes and many of the poor whites.

[2] Minnesota and Colorado, as well as the Dakotas and Montana, give the school

upon married women; nor has it been attempted, in the various constitutional amendments framed to give political suffrage to women, but hitherto always (except in Wyoming) rejected by the people, to draw such a distinction, which would indeed be abhorrent to the genius of American law.

It is important to remember that, by the Constitution of the United States, the right of suffrage in Federal or national elections (*i.e.* for presidential electors and members of Congress) is in each State that which the State confers on those who vote at the election of its more numerous House. That the differences which might exist between one State and another in the width of the Federal franchise thus granted, are at present insignificant is due, partly to the prevalence of democratic theories of equality over the whole Union, partly to the provision of the fourteenth amendment to the Federal Constitution, which reduces the representation of a State in the Federal House of Representatives, and therewith also its weight in a presidential election, in proportion to the number of adult male citizens disqualified in that State. As a State desires to have its full weight in national politics, it has a strong motive for the widest possible enlargement of its Federal franchise, and this implies a corresponding width in its domestic franchise.

The number of members of the legislature varies greatly from State to State. Delaware, with nine senators, has the smallest Senate, Illinois, with fifty-one, the largest. Delaware has also the smallest House of Representatives, consisting of twenty-one members; while New Hampshire, a very small State, has the largest with 321. The New York houses number 32 and 128 respectively, those of Pennsylvania 50 and 201, those of Massachusetts 40 and 240. In the Western and Southern States the number of representatives rarely exceeds 120.[1]

As there is a reason for everything in the world, if one could but find it out, so for this difference between the old New England States and those newer States which in many other

vote to women by their Constitutions; Massachusetts has granted it by statute; Washington permits the legislature to grant it; Idaho grants it provisionally, permitting the legislature to withdraw it. Montana confers what may be called the tax-payers' *referendum* or direct popular vote on women possessing the like qualifications with men (Art. ix. § 12).

[1] North Dakota, however, provides that its Senate may have as many as 50, its House as many as 140 members.



points have followed their precedents. In the New England States local feeling was and is intensely strong, and every little town wanted to have its member. In the West and South, local divisions have had less natural life; in fact, they are artificial divisions rather than genuine communities that arose spontaneously. Hence the same reason did not exist in the West and South for having a large Assembly; while the distrust of representatives, the desire to have as few of them as possible and pay them as little as possible, have been specially strong motives in the West and South, as also in New York and Pennsylvania, and have caused a restriction of numbers.

In all States the members of both Houses receive the same salary. In some cases it is fixed at an annual sum of from $150 (Maine) to $1500 (New York), the average being $500 (£100). More frequently, however, it is calculated at so much for every day during which the session lasts, varying from $1 (in Rhode Island) to $8 (in California and Nevada) per day (4s. 2d. to £1: 13: 4), ($5 seems to be the average), besides a small allowance, called mileage, for travelling expenses. These sums, although unremunerative to a man who leaves a thriving business to attend in the State capital, are an object of such desire to many of the representatives of the people, that the latter have thought it prudent to restrict the length of the legislative sessions, which now stand generally limited to a fixed number of days, varying from forty days in Georgia, Nebraska, and Oregon, to 150 days in Pennsylvania. The States which pay by the day are also those which limit the session. Some States secure themselves against prolonged sessions by providing that the daily pay shall diminish, or shall absolutely cease and determine, at the expiry of a certain number of days, hoping thereby to expedite business and check inordinate zeal for legislation.[1]

It was formerly usual for the legislature to meet annually, but the experience of bad legislation and over legislation has led to fewer as well as shorter sittings; and sessions are now biennial in all States but the five following:— Massachusetts, Rhode Island, New York, New Jersey, South Carolina, all of

[1] These limitations on payment are sometimes, where statutory, repealed for the occasion. In the Swiss Federal Assembly a member receives pay (16s. per diem) only for those days on which he answers to his name on the roll call.

them old States. In these the sessions are annual, save in that odd little nook Rhode Island, which still convokes her legislature every May at Newport, and afterwards holds an adjourned session at Providence, the other chief city of the commonwealth. There is, however, in nearly all States a power reserved to the governor to summon the Houses in extraordinary session should a pressing occasion arise, but the provisions for daily pay do not usually apply to these extra sessions.[1]

Bills may originate in either House, save that in twenty-one States money bills must originate in the House of Representatives, a rule for which, in the present condition of things, when both Houses are equally directly representative of the people and chosen by the same electors, no sufficient ground appears. It is a curious instance of the wish which animated the framers of the first Constitutions of the original thirteen States to reproduce those details of the English Constitution which had been deemed bulwarks of liberty. The newer States borrowed it from their elder sisters, and the existence of a similar provision in the Federal Constitution has helped to perpetuate it in all the States. But there is a reason for it in Congress, the Federal Senate not being directly representative of equal numbers of citizens, which is not found in the State legislatures: it is in these last a mere survival of no present functional value. Money bills may, however, be amended or rejected by the State Senates like any other bills, just as the Federal Senate amends money bills brought up from the House.

In one point a State Senate enjoys a special power, obviously modelled on that of the English House of Lords and the Federal Senate. It sits as a court under oath for the trial of State officials impeached by the House.[2] Like the Federal Senate, it has in many States the power of confirming or rejecting appointments to office made by the governor. When it considers these it is said to "go into executive session." The power is an important one in those States which allow the governor to nominate the higher judges. In other respects the powers and procedure of the two Houses of a State

[1] Some of the biennially-meeting legislatures are apt to hold adjourned sessions in the off years.

[2] In New York impeachments are tried by the Senate and the judges of the Court of Appeals sitting together: in Nebraska by the judges of the Supreme court.



legislature are identical;[1] except that, whereas the lieutenant-governor of a State is generally *ex officio* president of the Senate, with a casting vote therein, the House always chooses its own Speaker. The legal quorum is usually fixed, by the Constitution, at a majority of the whole number of members elected,[2] though a smaller number may adjourn and compel the attendance of absent members. Both Houses do most of their work by committees, much after the fashion of Congress,[3] and the committees are in both usually chosen by the Speaker (in the Senate by the President of that body), though it is often provided that the House (or Senate) may on motion vary their composition.[4] Both Houses sit with open doors, but in most States the Constitution empowers them to exclude strangers when the business requires secrecy.

The State governor has of course no right to dissolve the legislature, nor even to adjourn it unless the Houses, while agreeing to adjourn, disagree as to the date. Such control as the legislature can exercise over the State officers by way of inquiry into their conduct is generally exercised by committees, and it is in committees that the form of bills is usually settled and their fate decided, just as in the Federal Congress, the lobby having of course a great and usually a pernicious influence. The proceedings are rarely reported. Sometimes when a committee takes evidence on an important question reporters are present, and the proceedings more resemble a public meeting than a legislative session. It need scarcely be added that neither House separately, nor both Houses acting together,

[1] Here and there one finds slight differences, as, for instance, in Vermont the power decennially to propose amendments to the Constitution belongs to the Senate, though the concurrence of the House is needed. However, I do not attempt in this summary to give every detail of every Constitution, but only a fair general account of what commonly prevails, and is of most interest to the student of comparative politics.

[2] Four constitutions fix the quorum at two-thirds, and two specify a number.

[3] See, as to the committees of Congress, Chapter XV. *ante*. Many constitutions provide that no bill shall pass unless it has been previously referred to and considered by a committee.

[4] In Massachusetts there were in 1890–91 six standing committees of the Senate, ten of the House, and thirty-three joint standing committees of both Houses. In North Dakota there were in 1891 thirty-seven standing committees of the House, thirty-one of the Senate, and six joint standing committees of House and Senate. In New York there were thirty-three standing committees of the Senate, thirty-six of the Assembly.

can control an executive officer otherwise than either by passing a statute prescribing a certain course of action for him, which if it be in excess of their powers will be held unconstitutional and void, or by withholding the appropriations necessary to enable him to carry out the course of action he proposes to adopt. The latter method, where applicable, is the more effective, because it can be used by a bare majority of either House, whereas a bill passed by both Houses may be vetoed by the governor, a point so important as to need a few words.

Four States, three of them original States, vest legislative authority in the legislature alone. These are Rhode Island, Delaware, North Carolina, and Ohio. All the rest require a bill to be submitted to the governor, and permit him to return it to the legislature with his objections. If he so returns it, it can only be again passed "over the veto" by something more than a bare majority. To so pass a bill over the veto there is required —

In two States a majority of three-fifths in each House.

In twenty-seven States a majority of two-thirds in each House.

In nine States a majority in each House of all the members elected to that House.

In two States (North Dakota and Wyoming), a majority of two-thirds of all the members elected.

Here, therefore, as in the Federal Constitution, we find a useful safeguard against the unwisdom or misconduct of a legislature, and a method provided for escaping, in extreme cases, from those deadlocks which the system of checks and balances tends to occasion.

I have adverted in a preceding chapter to the restrictions imposed on the legislatures of the States by their respective Constitutions. These restrictions, which are numerous, elaborate, and instructive, take two forms —

I. Exclusions of a subject from legislative competence, *i.e.* prohibitions to the legislature to pass any law on certain enumerated subjects. The most important classes of prohibited statutes are —

Statutes inconsistent with democratic principles, as, for example, granting titles of nobility, favouring one religious denomination, creating a property qualification for suffrage or office.



Statutes against public policy, *e.g.* tolerating lotteries, impairing the obligation of contracts, incorporating or permitting the incorporation of banks, or the holding by a State of bank stock.[1]

Statutes special or local in their application, a very large and increasing category, the fulness and minuteness of which in many Constitutions show that the mischiefs arising from improvident or corrupt special legislation must have become alarming. The lists of prohibited subjects in the Constitutions of Missouri of 1875, Montana and North Dakota of 1889, Mississippi of 1890, are the most complete I have found.[2]

Statutes increasing the State debt beyond a certain limited amount, or permitting a local authority to increase its debt beyond a prescribed amount, the amount being usually fixed in proportion to the valuation of taxable property within the area administered by the local authority.[3]

II. Restrictions on the procedure of the legislature, *i.e.* directions as to the particular forms to be observed and times to be allowed in passing bills, sometimes all bills, sometimes bills of a certain specified nature. Among these restrictions will be found provisions —

As to the majorities necessary to pass certain bills, especially appropriation bills. Sometimes a majority of the whole number of members elected to each House is required, or a majority exceeding a bare majority.

As to the method of taking the votes, *e.g.* by calling over the roll and recording the vote of each member.

As to allowing certain intervals to elapse between each reading of a measure, and for preventing the hurried passage of bills, especially appropriation bills, at the end of the session.

[1] See, for instance, Constitution of Texas of 1876.

[2] Similar lists occur in the constitutions of all the Western and Southern States as well as of some Eastern States (*e.g.* Constitution of Pennsylvania of 1873, Art. iii. § 7; Constitution of New York, amendments of 1874 to Constitution of 1846). Among them the prohibitions to grant divorces and to authorize the adoption or legitimation of children are frequent.

[3] See also Chapter XLIII. on State Finance. The local authorities had been usually forbidden by statute to borrow or tax beyond a certain amount, but as they had formed the habit of obtaining dispensations from the State legislatures, the check mentioned in the text has been imposed on the latter.

As to reading of bills publicly and at full length.
As to sending all bills to a committee, and prescribing the mode of its action.
Against secret sessions (Idaho).
As to preventing an act from taking effect until a certain time, *e.g.* ninety days (South Dakota, Kentucky), after the adjournment of the session.
Against changing the purpose of a bill during its passage.
As to including in a bill only one subject, and expressing that subject in the title of the bill.
Against re-enacting, or amending, or incorporating, any former act by reference to its title merely, without setting out its contents.[1]

The two latter classes of provisions might be found wholesome in England, where much of the difficulty complained of by the judges in construing the law arises from the modern habit of incorporating parts of former statutes, and dealing with them by reference.[2]

Where statutes have been passed by a legislature upon a prohibited subject, or where the prescribed forms have been transgressed or omitted, the statute will be held void so far as inconsistent with the Constitution.

Even these multiform restrictions on the State legislatures have not been found sufficient. Bitted and bridled as they are by the Constitutions, they contrive, as will appear in a later chapter, to do plenty of mischief in the direction of private or special legislation.

Although State legislatures have of course no concern whatever with foreign affairs, this is not deemed a reason for abstaining from passing resolutions on that subject. The passion for what is called "resoluting" is strong everywhere in America, and an expression of sympathy with an oppressed foreign nationality, or of displeasure at any unfriendly behaviour of a foreign power, is not only an obvious way of relieving the feelings of the legislators, but often an electioneering device, which appeals to some section of the State voters. Accordingly such resolutions are common, and, though of course quite irregular, quite innocuous.

Debates in these bodies are seldom well reported, and sometimes not reported at all. One result is that the conduct of members escapes the scrutiny of their constituents; a better one that speeches are generally short and practical, the motive for rhetorical displays being absent. If a man does not make a reputation for oratory, he may for quick good sense and business habits. However, so much of the real work is done in committees that talent for intrigue or "management" usually counts for more than debating power.

[1] Indiana and Oregon direct every Act to be plainly worded, avoiding as far as possible technical terms, and Louisiana (Constitution of 1879, § 31) says: "The General Assembly shall never adopt any system or code of laws by general reference to such system or code of laws, but in all cases shall recite at length the several provisions of the laws it may enact."

[2] Not to add that the inclusion in one statute of wholly different matters may operate harshly on persons who have failed to note the minor contents of a bill whose principal purpose does not affect them. The commoners of the New Forest in Hampshire were, some years ago, surprised to awake one morning and find that the Crown had smuggled through Parliament, in an Act relating to foreshores in Scotland, a clause seriously prejudicial to their interests.